IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.4366 OF 2007

Ramchandra Gundopant Kanade ..Petitioner.
Vs.
M/s. Keshavaji Premchand & Company ..Respondent.

Mr.H.S.Venegavkar, adv. for the Petitioner.

CORAM : J.H.BHATIA, J.
DATE : JULY 13, 2007.

P.C.

1. Heard Mr.Venegavkar the learned counsel for the petitioners.

2. The respondent firm had filed a suit for possession of open space, which was given to the petitioner on a rent of Rs.75/- per month, on the ground that firm bonafide required the land for the purpose of construction. The suit was contested by the petitioner by filing written statement. He denied the title of the respondent on the land contending that he was inducted on the said space by Sultanpure and Others for about 30 years ago and recently he had learnt that the land belongs to the Government. In view of the pleadings and the evidence on record, the trial Court dismissed the suit filed by the respondents. However, the appeal filed by the respondents came to be allowed. The learned Appellate Court came to conclusion that in view of the admissions of the petitioner in paragraph 5

and 6 of the Written Statement, the petitioner had admitted relationship of landlord and tenant. The learned Appellate Court also found that bonafide requirement of the plaintiff/firm was proved. With these findings the suit came to be decreed.

3. Even though in paragraph 5 of the Written Statement, the defendant/petitioner contended that about 30-40 years ago, he had taken the space on rent from one Sultanpure and Others, in the same paragraph he admitted that the plaintiffs had repeatedly asked the defendants to increase the rent and, therefore, it was increased upto Rs.75/- per month and in paragraph 6 he contended that in 1995 he had filed an application for determination of reasonable rent because repeatedly he had offered to pay rent and requested plaintiff to issue receipts but the plaintiff had not issued the receipts and, therefore, the defendant was depositing the rent with the Court. Infact, these admissions in paragraph 5 and 6 clearly reveal that the petitioner had admitted relationship of the landlord and tenant. It clearly shows that from time to time rent was enhanced on the demand by the plaintiffs and the defendants had also filed application for determination of the reasonable rent and he had also offered to pay the rent subject to their issuing receipts. In view of these admissions, the defendant is estopped from

pleading that there is no relationship of landlord and tenant. The learned Appellate Court came to conclusion that the plaintiff bonafide requires the space for construction of R.C.C building. This is a question of fact. I do not find any fault with the impugned judgment.

4. At this stage, the learned counsel for the petitioner seeks sometime for vacating premises because this is the only space for earning his livelihood. The Appellate Court had granted three months time to vacate the premises while passing the decree on 14-3-2007. Now it is rainy season and, therefore, it may cause inconvenience to the petitioner to vacate immediately.

5. Mr.Venegavkar the learned counsel for the petitioner makes a statement that petitioner will file his undertaking before this Court within one week to the effect that he would vacate the premises by the end of October, 2007. In the interest of justice, the statement is accepted with aforesaid directions and time is granted upto the end of October, 2007 to vacate the premises.

6. With aforesaid directions, petition stands dismissed.

[J.H.BHATIA, J.]